

Letter ID	Commenter Name	Commenter Org.
556	Ex. 6 Personal Privacy (PP)	South Dakota Department of Game Fish, and Parks
556		South Dakota Department of Game Fish, and Parks
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556		South Dakota Department of Game Fish, and Parks
399		South Dakota Game, Fish and Parks

## Text

South Dakota Department of Game Fish, and Parks (GF&P) reviewed information provided in the Public Notice: Administrative Record for the Dewey-Burdock Class III and Class V Injection Well Draft Area and "Additional Administrative Record Documents." Agency comments result exclusively from evaluation of the analysis found in the Additional Administrative Record Documents and specifically the Draft Cumulative Effects Analysis (Administrative Record). Our evaluation identifies issues listed below.

- South Dakota Mine Permit
- Avian management planning
- Affected environment
- Species of state concern
- Waste disposal options
- Process pond mitigation

[...]

If you have question please contact me at any of the numbers listed.

### Avian Management Plan

The Administrative Record identifies an avian management plan. At this time, the management plan is conceptual, has not undergone agency review and essentially does not exist; therefore the extent and effectiveness of mitigation cannot be substantiated.

The Dewey Burdock Project proposes a plan to mitigate impacts to avian species during operations, however, special emphasis is given to bald eagles. Monitoring wells, a processing plant, production well fields, disposal facilities, and a supply water well are all currently proposed within a buffer established for an active bald eagle nest. During the life of the project, seasonal restrictions and unspecified mitigative measures are proposed for the facilities. The Administrative Record does not analyze the viability of seasonal mitigation measures on continuously operated facilities. Analysis also does not consider the questionable effectiveness of seasonal mitigation during times of urgent maintenance or situations requiring emergency repairs on continuously operated facilities. Mitigation measures also rely on individual eagle tolerance; as tolerance is known to vary greatly among individuals.

Unsuccessful mitigation risks a disturbance take. Analysis in the Administrative Record does not recognize the necessity of bald eagle take permitting.

Administrative Record fails to recognize or establish the relationship between the site's prairie dog colonies and avian management. The site's prairie dog colonies are the presumed forage base and home range for bald eagles and other avian species. The Administrative Record does not describe the project's direct and cumulative effects on prairie dog colonies, and collateral impacts on bald eagles and other avian species.

Authorization of UIC activities on the site provides a reasonable risk of unpermitted bald eagle disturbance take. Seasonal mitigation in the discernible method of nesting bald eagle protection but USFWS take permitting is done "only" if necessary. Obtaining a permit out of necessity implies a response to a situation that may already has constituted disturbance or take.

Operation of UIC permits in important bald eagle habitat, and the uncertainty associated with a seasonal mitigation strategy continuously operated facility will result in the probability of take. The Administrative Record does not assess the probability of bald eagle take during project operation.

### Species of state (South Dakota) concerns

Section 14.2, "Species of State and Tribal Interest: The Short-Horned Lizard" does not describe species of state interest.

For a complete listing of state threatened, endangered or rare species see: [http://gfp.sd.gov/wild life/threatened-endangered/](http://gfp.sd.gov/wild%20life/threatened-endangered/).

### Waste disposal options

The Administrative Record does not analyze the potential for combined disposal methods (deep well and land application), or the potential for onsite disposal of wastes produced off site. Section '10.1 Overview of Operations' in the Class III permit states that Powertech may use land application in conjunction with deep disposal wells or by itself.

### Process Pond mitigation

The Administrative Record is silent on the ecologic impact of process ponds containing toxic solutions or viability of mitigation measures. Section '14.0 Impacts To Ecological Resources' did not include analysis of direct and cumulative impacts to migratory birds and bats exposed to toxic solutions contained in the projects process related ponds.

Subject: Dewey-Burdock Class III and Class V Injection Well Draft Area Permits

Hi Valois,

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401		South Dakota Game, Fish and Parks
402		South Dakota Game, Fish and Parks
527		Clean Water Alliance

I am reviewing information provided for in the 'Public Notice: Administrative Record for the Dewey-Burdock Class III and Class V Injection Well Draft Area Permits' <https://www.epa.gov/uic/administrativerecord-dewey-burdock-class-iii-and-class-v-injection-well-draft-area-permits>. I'm unclear if the "Additional Administrative Record Documents", specifically, the 'Draft Cumulative Effects Analysis' are considered a component of the Class III and V draft permits and thus subject to review and comments. The statement below is copied from the website and if read literally, it could be understood to mean that comments are sought only for the Class III and V draft area permits, and the identification of traditional cultural properties...My agency would like to provide comments on both the contents of the permits and Draft Cumulative Effects Analysis. Please provide us with an explanation of the scope of EPA's request.

In addition to seeking comments on the Class III and V draft area permits, the EPA is seeking public comment on the identification of traditional cultural properties at the Dewey-Burdock Project Site Area of Potential Effects, on the potential adverse effects of the proposed project, and on measures to avoid, minimize or mitigate potential adverse effects on historic and traditional cultural properties pursuant to Section 106 of the National Historic Preservation Act and 36 CFR § 800.2(d) and § 800.6(a)(4).

The EPA is also seeking comment on two options for approval of the aquifer exemption that Powertech requested related to the Class III permit application. The two options are discussed in the Aquifer Exemption Draft Record of Decision available on the EPA Region 8 UIC Program website.

The EPA has performed an Environmental Justice (EJ) analysis for the Dewey-Burdock UIC permitting actions and is seeking comment on the Draft EJ analysis document.

[ATTACHMENT: "removed.txt"]

Subject: RE: Dewey-Burdock Class III and Class V Injection Well Draft Area Permits

Thanks Valois,

Which EPA program administers the injection well program?

[ATTACHMENT: "removed.txt"]

Subject: RE: Dewey-Burdock Class III and Class V Injection Well Draft Area Permits

Hi Valois,

A NEPA related question for you: Will EPA's "decision" / Administrative Record provide analysis of various alternatives? That is, consideration of No Action (no permit), and alternative actions (permit with various conditions).

Subject: RE: Dewey-Burdock Class III and Class V Injection Well Draft Area Permits - EPA has extended the public comment period through June 19

Morning Valois

144.4 includes state wildlife agency consultation as well as federal ESA. Was that consultation complete with sending SD GF&P the notice back in March 2017 or should we expect something more formal? GF&P intends to submit comments as a part of the scoping/public hearings. Submitting comments ensure our concerns are recognized but if you require consultation with us that also offers a better opportunity to present them.

Thanks for your help.

#### PROCESS ISSUES

The basic process issue in this case has been the failure of the EPA to adhere to the NEPA process. While the NRC has attempted to follow that process for the possession of nuclear materials, its actions have not adequately covered a variety of issues that are under the EPA's purview, particularly water issues. The EPA needs to complete its own NEPA process.

[...]

At the end of the Class V Fact Sheet and the Draft Cumulative Effects Analysis, the EPA indicates that the Endangered Species Act will be complied with, but gives no information on how it intends to do this. When will this be done? What species will be considered? Who will do the analysis (not the company)? This should already have been completed before draft permits were issued.

The EPA mentions the presence of a short-horned lizard, which is rare and protected in South Dakota, in the proposed project area. After stating that the species is "important in some tribal cultures," it offers the solution "Once construction activities begin at the site, the EPA expects that the [sic] any short-horned lizards that were in the area will seek less disturbed locations." This is pure conjecture, without any back-up information on the size or habits of the lizards. Are they territorial, or is it species-appropriate for them to move? Are they large enough to move fast enough to out-run a bulldozer or pick-up truck? Or are they, in reality, unprotected?

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This and similar information must be provided and backed by scientific research at the Dewey-Burdock site for this and other species. Animals should not simply be expected to move out of a site that's over 10,000 acres in a systematic and comprehensive process. And the EPA then expects them to just move back in after mining is complete – as if the same animals will be alive and remember their former homes after as many as 20 years. This is beyond unacceptable in the direction of ludicrous – and is certainly unacceptable.

Species other than animals are not considered in this discussion. Plants cannot simply move off the site. Some of them are important to tribal practices and customs, such as medicinal plants and timsila (prairie turnips). Full scientific information should be gathered, and full analysis must be done, for non-animal species. Species that are important to the long-term residents of the area -- the Lakota, Cheyenne, and other native nations – require special protection. There is already information on protection of some species in project documents that could serve as a base for part of this analysis. However, a full and independent analysis is also needed.

This analysis would include close consideration of the opinion of the South Dakota Department of Game, Fish and Parks. This opinion was stated in an October 17, 2008, letter written by Stan Michals. Michals said that exploratory activity should not take place on some parts of the project area between February and August (inclusive) due to the presence of a bald eagle nest (a state-protected bird) and a redtail hawk nest. Mining, deep disposal wells, land application, and reclamation, which are more long-lasting and disruptive than exploration, should clearly also not take place during those seven months of the year in raptor nesting and other protected areas.

The sturgeon chub must be included in the discussion of wildlife concerns. It is present in the Cheyenne River and may be threatened or endangered in areas downstream from the proposed mine. Additional silt, heavy metals, and radioactive materials would be potential threats.

[...]

In addition, the EPA should not rely on the NRC's analysis, recommendations, or regulations. The processes by the two agencies should be independent, so that the proposed mine, disposal wells, and aquifer exemption receive the benefits of the expertise and different regulatory focuses of both agencies.

[...]

We support the conclusion of EPA's statutory analysis that the Dewey-Burdock mine is subject to the Clean Air Act and subpart W. If the project goes forward, we request that public education sessions and public comment periods be held as part of the subpart W regulatory process.

#### South Dakota Mine Permit

Wildlife mitigative strategies presented in the Administrative Record are tiered to Powertech's proposed mine permit. EPA must recognize Powertech has only applied for a state mine permit. The proposed state mine permit application has no state standing. Under the SD Mined Land Reclamation Act (SD Codified Law Chapter 45-6b), the Board of Minerals and Environment (BME) is charged with issuing state permits and requirements for ISR facilities. In November of 2013, the BME discontinued hearings on Powertech's proposed state mine permit application until other state and federal agencies finalized their respective permitting. Powertech proposed mine permit application is still pending and no state mine permit exists. The Administrative Record must not reference a state large scale mine permit.

#### Affected environment

The Administrative Record does not include the site's available wildlife data in describing impacts to ecological resources. Scant use of citations in the Administrative Record makes it difficult to determine what available wildlife study data is used to describe the affected environment. It is reasonable to believe that wildlife data is only as current as the date of application. However it must be noted that it has been almost 10 years since the EPA has started its UGI evaluation. During that time, new wildlife and habitat data have enhanced understanding of the site's ecological conditions. Also, recently listed ESA species may exist on site. The Administrative Record did not adequately describe the affected environment or impacts to ecological resources.

Additional wildlife information includes:

Prairie dog colonies: The initial baseline wildlife survey documents only 3 of the 7 prairie dog colonies known to exist in the wildlife study area. The significance of the ecologic function of both the existing and newly identified prairie dog colonies is unknown. Direct and cumulative UIC impacts on prairie dog viability are not considered in the Administrative Record.

Bats: The USFWS ESA listing of the Northern Long-eared Bat is a significant change since permitting began on the Dewey Burdock Project. The Administrative Record does not address the recent ESA listing or the habitat potential of the project area's historic mine workings.

Burrowing owls: Recent wildlife surveys by Powertech have identified burrowing owls use in one of the project area's prairie dog colonies. The extent of burrowing owl use at the site's existing or newly discovered colonies is unknown.



Bald eagle: The bald eagle nest identified in the initial wildlife survey is no longer in use, but an alternated nest is now the primary nest site. Powertech proposes construction and facility operation within active bald eagle nest buffers. The Administrative Record does not consider bald eagle disturbance take resulting from project effects on forage areas and home range.

Reptiles and amphibians: The rational to determine impacts to short-horned lizard on page 149 of the Draft Cumulative Effects Analysis is unfounded. The rational presumes that native prairie, the preferred habitat of lizards, does not exist on rangelands and since impacts are on rangelands, lizards will not be impacted. The rational originates from Section 6.0 'Impacts To Land Use'. Baseline study from the project identifies native vegetation and "widespread occurrence" of an unknown lizard species. The Administrative Record does not identify native vegetation, cumulative effects of conversion of native vegetation, or direct impacts on lizards.

Here are links to species petitioned to List or down-list under the Endangered Species Act

Of special significance in the Dewey Burdock mining proposal, is the petition to list the Sturgeon chub, which is in the Cheyenne River and the White River. You may wish to pay attention to that one.

#### RECENT LISTINGS

rusty patched bumble bee petition - Listed in February 2017 - as an endangered species under the Endangered Species Act

<https://www.federalregister.gov/documents/2017/02/10/2017-02865/endangered-and-threatened-wildlifeand-plants-endangered-species-status-for-rusty-patched-bumble-bee>

Petition by Xerces Society

<http://www.xerces.org/wp-content/uploads/2013/01/Bombus-affinis-petition.pdf>

#### STATUS PENDING

#### PETITION TO DE-LIST

Scroll down further for more info on the petition to delist the American Burying Beetle, look for photo of the beetle

Petition to de-list:

<https://www.fws.gov/southeast/candidateconservation/pdf/petition-to-delist-american-burying-beetle.pdf>

USFWS 90 Day Finding:

<https://www.fws.gov/midwest/endangered/insects/ambbb/90DayFinding16March2016.html>

#### PETITIONS TO LIST

#### BIRDS

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Black Backed WoodPecker, DPS

Chad Hanson , BCA, CBD

(deadline - USFWS decision in fall 2017)

<http://ecos.fws.gov/docs/petitions/92210/416.pdf>

The Golden Winged Warbler,

Anna Sewell

<https://www.fws.gov/midwest/es/soc/birds/goldenwingedwarbler/goldenwingedwarblerpetition.pdf>

#### MAMMALS

The Plains Spotted Skunk

<https://www.fws.gov/midwest/es/soc/mammals/pdf/PetitionList4SppGrasslandThicket.pdf>

#### BUMBLE BEES

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western bumble bee petition

Defenders of Wildlife

<http://ecos.fws.gov/docs/petitions/92000/679.pdf>

Docket

<http://www.regulations.gov/#!docketDetail;D=FWS-R6-ES-2016-0023>

yellow banded bumble bee petition

Defenders of Wildlife

<http://ecos.fws.gov/docs/petitions/92000/681.pdf>



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docket

<http://www.regulations.gov/#!docketDetail;D=FWS-R5-ES-2016-0024>

#### BUTTERFLIES

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petition to list Monarch butterfly

Center for Biological Diversity, Xerces Society, Center for Food Safety

<http://ecos.fws.gov/docs/petitions/92210/730.pdf>

petition to list regal fritillary butterfly

Wildearth Guardians

<http://ecos.fws.gov/docs/petitions/92000/462.pdf>

Status of review

<https://ecos.fws.gov/ecp0/profile/speciesProfile?scode=1075>

#### FISH

Petition to list Sturgeon & Sicklefin Chub, Wildearth Guardians,

petition link:

[http://www.wildearthguardians.org/site/DocServer/Sturgeon\\_SicklefinChubPetition8\\_11\\_16.pdf?docID=17346](http://www.wildearthguardians.org/site/DocServer/Sturgeon_SicklefinChubPetition8_11_16.pdf?docID=17346)

#### REPTILES/AMPHIBIANS

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Reptiles/Amphibians (lots-53 species)

One species within 53 species, includes - Blanding turtle is in SD

Center for Biological Diversity

<http://ecos.fws.gov/docs/petitions/92210/662.pdf>

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Clean Water Alliance

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